land, with a right to enter to cut and remove the trees, to the plaintiff, and his heirs, with covenants of warranty. After a lapse of more than a reasonable time for cutting and removing the trees, the plaintiff brings a bill to gain possession of them, and for an injunction restraining the defendant from cutting them. *Held*, that the relief sought by the plaintiff be granted in full. *Chapman* v. *Dearman*, 181 S. W. 808 (Tex.).

Growing trees may be granted in fee without granting a corresponding interest in the soil. *Stanley* v. *White*, 14 East 332; *White* v. *Foster*, 102 Mass. 375, 378. But the grant carries, by implication, a right in the soil for support and nutriment, and a right to enter to remove the timber. *Clap* v. *Draper*, 4 Mass. 265; *Liford's Case*, 11 Coke 85, 99. As such a conveyance deprives the grantor of practically all enjoyment of the soil while the trees remain standing, courts are reluctant to construe a grant of timber as in fee. Hence, though the words of the deed are unqualified as to title and time, their literal meaning is avoided whenever possible. Thus, if the words of the grant are applicable to a sale of personalty, the trees are treated as such; title to them does not pass until severance, and the contract endures only a reasonable time. *Houston Oil Co.* v. *Boykin*, 153 S. W. 1176 (Tex.). Again, if the grant of the right of entry is not specifically unlimited, in some courts, the title to the timber is held to pass in fee, but the right of entry is treated as contractual, and is limited to a reasonable time. *Decker* v. *Hunt*, 111 App. Div. 821, 825, 98 N. Y. Supp. 174, 177; *Western Lime, etc. Co.* v. *Copper River Land Co.*, 138 Wis. 404, 412, 120 N. W. 277, 280. Other courts look at such a conveyance as giving a mere term in the trees, and hold that all trees uncut after a reasonable time revert to the grantor. *Patterson* v. *Graham*, 164 Pa. St. 234, 30 Atl. 247. This same diversity of view is displayed in adjusting the rights of the parties after the expiration of the time for removal. See 17 HARV. L. REV. 411. But where the grant is unambiguously in fee, and in addition the right of entry is expressly declared to be perpetual, the courts have construed the conveyance as passing a perpetual right to lumber the tract. *North Georgia Co.* v. *Bebee*, 128 Ga. 563, 57 S. E. 873; *France* v. *Deep River, etc. Co.*, 79 Wash. 336, 140 Pac. 361. But the principal case goes further, for the right of entry, though granted to the plaintiff and his heirs, is not expressly declared perpetual. It is supported, however, by a similar case in the same jurisdiction. *Lodwick Lumber Co.* v. *Taylor*, 100 Tex. 270, 98 S. W. 238.

EQUITY — JURISDICTION — PROCEDURE — DECREE OPERATING AS A WARRANTY DEED. — In a suit for specific performance of a contract for the sale of Kansas land, the court in that state decreed that the vendor, who was personally served with process, should execute a conveyance, and that, if he failed to do so, the decree should have the same effect as if a conveyance had been made, according to KAN. GEN. STAT. 1909, § 5993. By the Kansas law, the vendor would have been required to execute a warranty deed. No deed was executed, and the vendee took possession under the decree. He now sues the vendor to recover compensation for his loss through the foreclosure of a prior mortgage on the land, claiming that the decree operated as a warranty deed. *Held*, that he may recover. *Paris* v. *Golden*, 153 Pac. 528 (Kan.)

For a discussion of the questions involved, see NOTES, p. 770.

EVIDENCE — CONFESSIONS — ADMISSIBILITY OF PLEA OF GUILTY WITHDRAWN BY LEAVE OF COURT. — The defendant entered a plea of guilty to an indictment. By leave of court he withdrew this plea and entered a plea of not guilty. The court admitted evidence of the plea of guilty. *Held*, that there was no error in admitting the evidence. *State* v. *Carta*, 96 Atl. 411 (Conn.).

Among the few unsatisfactory decisions to be found, there is a split whether a

withdrawn plea of guilty is admissible in evidence. *People* v. *Jacobs*, 165 N. Y. App. 721, 151 N. Y. Supp. 522. See *Commonwealth* v. *Ervine*, 8 Dana (Ky.) 30. *Contra*, *State* v. *Meyers*, 99 Mo. 107, 119, 12 S. W. 516, 519. *Cf. People* v. *Ryan*, 82 Cal. 617, 23 Pac. 121. A voluntary acknowledgment of guilt by the defendant is ordinarily probative, and is admissible as a confession. A voluntary plea of guilty should thus be admissible, unless the statement of a person in a criminal plea, like that of an actor on the stage, loses its ordinary significance. It is well settled that a plea of guilty is competent as an admission. *Parker* v. *Couture*, 63 Vt. 449, 21 Atl. 1102; *Green* v. *Bedell*, 48 N. H. 546. This involves the decision that the plea is probative; and it should hence be admissible as a confession, if it is voluntary. A plea of guilty may, it is submitted, be voluntary. The demand of the court that the defendant make some plea would not seem to offer any inducement for a false plea of guilty. There might be circumstances which showed the plea to be involuntary. But these present only a preliminary question for the trial judge; and the judge's permission for the defendant to withdraw his plea as a conclusive determination of guilt and to thus get a jury trial does not, it seems, necessarily show that he considered the plea to be involuntary. It might be objected that evidence of the plea would be given undue weight by the jury; but the chance of this would seem slight in view of the defendant's opportunity to show the circumstances under which the plea was offered. The evidence would thus seem admissible. The feeling of a lawyer that it should not be admitted arises probably from the point of view that a trial is a game and that it is unsportsmanlike for one party to take advantage of the withdrawn pleadings of the other.

EVIDENCE — DECLARATIONS CONCERNING MATTERS OF GENERAL OR PUBLIC INTEREST — TRADITIONARY PROOF THAT THE LOCUS IS INCLUDED IN SPECIFIED LARGER TRACT. — The plaintiff in ejectment claimed under a deed which described the land conveyed merely as the "Grant Mill Place." He offered to testify to a general reputation in the community that the land in issue was embraced within the tract so known. While reversing the case on other grounds, the court held that this evidence was properly excluded. *McAfee* v. *Newberry*, 87 S. E. 392 (Ga.).

Georgia has codified the rule permitting traditionary proof of ancient boundaries; the statute embracing private boundaries, in accordance with the general rule in this country. (1910, GEORGIA CIVIL CODE, § 5772.) This exception to the hearsay rule is based on necessity and the fact that community reputation upon such subjects is likely to embody the truth. See *Toole* v. *Peterson*, 9 Ired. L. (N. C.) 180, 185; *Harriman* v. *Brown*, 8 Leigh (Va.) 697, 707, 710; 2 WIGMORE, EVIDENCE, §§ 1580–83. Strangely enough, there has been little adjudication as to precisely what may be proved by this method. We are free therefore to decide the case in the manner indicated by the reasons that justify the rule. It is laid down broadly that "particular facts" cannot be proved. 2 WIGMORE, EVIDENCE, § 1585. However, evidence was admitted to prove that a castle was located in a certain hundred. *Duke of Newcastle* v. *Broxtowe*, 4 B. & Ad. 273. But evidence that premises lay within a larger unsurveyed tract was not admitted when the boundaries of the larger tract could have been determined by survey. *Mendenhall* v. *Cassels*, 3 Dev. & B. (N. C.) 49. See also *Toole* v. *Peterson*, 9 Ired. L. (N. C.) 180. The difference between the cases, both in the matter of necessity and in the probability of accurate report, is evident. Necessity is absolute whenever the boundaries lie only in tradition; when they do, the location of a certain piece within a larger tract is as capable of accurate report as the position of the boundaries of the larger tract themselves, for the two things are identical. The principal case demonstrates the wisdom of discretionary leeway which will permit the admission of evidence